DETAILED ACTION

Acknowledgements

1. The Applicants amendment filed on November 13, 2007 is hereby acknowledged

Response to Arguments

2. Applicant's arguments with respect to the pending claims have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3. Claims 1-8 and 19-25 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Based on Supreme Court precedent and recent Federal Circuit decisions, § 101 process must (1) be tied to another statutory class (such as a particular apparatus) or (2) transform underlying subject matter (such as an article or materials) to a different state or thing. If neither of these requirements is met by the claim(s), the method is not a patent eligible process under 35 U.S.C. § 101.

Claims 1 and 19 discloses a mere nominal recitation of technology and fails to transform the underlying subject matter to a different state, therefore the claimed method is non-statutory and rejected under 35 U.S.C. 101 (*Diamond v. Diehr*, 450 U.S. 175, 184 (1981); *Parker v. Flook*, 437 U.S. 584, 588 n.9 (1978); *Gottschalk v. Benson*, 409 U.S. 63, 70 (1972); *Cochrane v. Deener*, 94 U.S. 780, 787-88 (1876)).

Claims 2-8 and 20-25 are dependant upon claims 1 and 19 respectively and are rejected or at least the same reason.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

5. The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-8 and 19-25rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. In the present application there is insufficient support for the claimed feature of "providing a publicly-owned, high-capacity communications network ", it is unclear from the specification how the network is created or initialized.

Claims 2-8 and 20-25 are dependant upon claims 1 and 19 and are rejected for at least the same reason.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 5-8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 5 states the term "governmental entity" this term is vague and indefinite since the term "entity" is non-limiting.

Claims 6-7 are dependant upon claim 5 and are rejected for at least the same reasons.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-8 and 19-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schweitzer et al. (US Patent 6,418,467) in view of Maher III, et al.(US Patent 6,654,373)

6. As per claim 1,

Schweitzer et al. ('467)discloses a method for providing data transport services, comprising the steps of:

providing a publicly-owned, high-capacity communications network; allowing connection of the communications network to service providers and paying customers; charging tolls for use of the communications network by the service providers and customers, (Column 2, lines 19-52)

Schweitzer et al. ('467) does not explicitly disclose "without regard to the type or content of the data transmitted" Maher III ('373) discloses"without regard to the type or content of the data transmitted".(Column 1, lines 11-22) It would be obvious to one having ordinary skill in the art at the time the invention was made to combine the Schweitzer et al. ('467) method with the Maher III et al. ('373) method in order to allow incompatible systems to

reliably exchange data. The Examiner notes that this feature is commonly associated with TCP/IP protocol.

7. Claims 5-8 are not patentably distinct from claim 1 and are rejected for at least the same reasons.

8. As per claim 2,

Schweitzer et al. ('467) discloses a method according to claim 1,

wherein the network comprises high- capacity fiber optic communication lines and end-user connections. (Column 1, lines 50-55) .

9. As per claim 3,

Schweitzer et al. ('467) discloses a method according to claim 1,

(a) further comprising the step of interconnecting the high-capacity communications network to other communications networks. (Column 1, lines 50-55).

10. As per claim 4,

Schweitzer et al. ('467) discloses a method according to claim 1,

wherein the service providers are selected from the group consisting of cable television companies, telecommunications companies, and internet service providers. (Column 1, lines 20-32).

11. As per claim 8,

Schweitzer et al. ('467) discloses a method according to claim 1,

(a) wherein the fees collected from users of the network and service providers are used to meet costs associated with the network. (Column 15, lines 55-64 – Examiner notes that the profits made by any company are in part utilize to maintain the businesses infrastructure).

Claims 19-25 are not patentably distinct from claims 1-8 and are rejected for at least the same reasons.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JOHN M. WINTER whose telephone number is (571)272-6713. The examiner can normally be reached on M-F 8:30-6, 1st Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Calvin Hewitt can be reached on (571) 272-6709. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JMW

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